

Tentative Rulings

Law & Motion and Family Law Calendar for June 14, 2010

June 10, 2010, 4:00p.m.

Judge Janet Hilde
Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530/283-6305 by 12:00 noon, June 11th, notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

Probate – 9:00a.m.

Case No. PR10-00014 – Estate of Sieh

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. Petitioner's request for probate and appointment of executor is granted. Petitioner is to prepare the Order.

Case No. PR09-00038 – Guardianship of Benner

Tentative Ruling: **Appearance required.** The court will hear the results of mediation with regard to visitation.

Case No. PR06-6295– Guardianship of Billings

Tentative Ruling: **No appearance required.** The court has received the guardianship status report, and continues the guardianship. The court sets the annual review date for June 13, 2011, at 9:00a.m. The clerk is directed to send notice informing the guardian of the duty to complete a confidential status report and include a blank form for the guardian to complete and return by mail at least one month before the report is due.

Case No. PR05-6274 – Guardianship of Brownlee

Tentative Ruling: **Appearance required.** The court has not received a proof of service, as required.

Case No. PR05-6243 – Guardianship of McIntosh

Tentative Ruling: **Appearance required.** The court has not received the guardianship status report.

Case No. PR05-6242 – Guardianship of McIntosh

Tentative Ruling: **Appearance required.** The court has not received the guardianship status report.

Case No. PR06-6310 – Guardianship of Rehard

Tentative Ruling: **No appearance required.** The court has received the guardianship status report, and continues the guardianship. The court sets the annual review date for June 13, 2011, at 9:00a.m. The clerk is directed to send notice informing the guardian of the duty to complete a confidential status report and include a blank form for the guardian to complete and return by mail at least one month before the report is due.

Civil – 9:30a.m.

Case No. CV09-00165 – First National Bank of Omaha vs. Longballa

Tentative Ruling: **Granted.** The court has received a letter from defendant, stating that he has no objection to the summary judgment/summary adjudication issues in this case. Therefore, plaintiff's motion for summary judgment is granted. Plaintiff is to prepare the Order.

Case No. LC09-00290 – Ford Motor Credit vs. Hinson

Tentative Ruling: **Appearance required.** If plaintiff's counsel is requesting monetary sanctions for filing the motion to compel discovery, counsel is required to appear. Otherwise, the date for trial is confirmed for July 22, 2010 at 1:30p.m.

Case No. CV09-00263 – Nord vs. Nord

Tentative Ruling: The demurrer of Defendant Bradley Nord, individually and as Trustee of the Nord Family Living Trust ("Defendant") to the Complaint of Plaintiff Stephanie France (Nord) ("Plaintiff") is **sustained** as to the third, sixth, eighth, and ninth causes of action with leave to amend, and **overruled** as to the remainder. Plaintiff has 10 days to amend the Complaint.

Defendant's Demurrer

Defendant's Amended Demurrer to the Complaint states that he is demurring to the Complaint on three separate grounds pursuant to California Code of Civil Procedure section 430.10(e), (f) and (g). The Memorandum of Points and Authorities in Support of Demurrer ("Memorandum"), however, only appears to argue that the Complaint is uncertain under CCP 430.10(g). Defendant's Memorandum contains very little by way of authority for the arguments contained therein.

The Memorandum and Reply brief also improperly refer to matters outside of the pleadings, and essentially ask that the Court weigh the merits of Plaintiff's claims. As discussed below, this is not the standard of review for a demurrer. Defendant's briefs also reference matters of which he claims the Court could take judicial notice, but fails to properly request judicial notice of any particular facts. *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881 (error for court to consider facts asserted in memorandum supporting demurrer); *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914 (the court cannot accept as true the contents of pleadings or exhibits in another action just because they are part of the court record or file because they constitute inadmissible hearsay). Thus, Defendant's requests for judicial notice are denied.

Defendant's Memorandum and Reply, cloaked in arguments that the Complaint is uncertain, largely seeks to impose specificity pleading standards on the causes of action in the Complaint that are not supported by authority provided to the Court, or found by the Court's own research.

Standard of Review

A demurrer admits the truth of all material facts alleged in the pleading, but not the contentions, deductions or conclusions of law or fact. *Adelman v. Associated Int'l Ins. Co.*, (2001) 90 Cal.App.4th 352, 359; *Cross v. Bonded Adjustment Bureau* (1996) 48 Cal.App.4th 266. When the allegations of a pleading establish that there is no legal theory upon which liability may be imposed, the Court should sustain the demurrer. *Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 485. If the circumstances show that the pleading deficiencies cannot be cured, the demurrer should be sustained without leave to amend. *Droz v. Pacific Nat'l Ins. Co.* (1982) 138 Cal.App.3d 181. Furthermore, a demurrer for uncertainty will be sustained only where the complaint is so bad that the defendant cannot reasonably respond. *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.

The Court overrules the demurrer entirely on the ground that it is uncertain. Any ambiguities in the Complaint may be clarified during discovery. *Id.*

Third, Sixth, Eighth and Ninth Causes of Action for Constructive or Resulting Trusts

Pursuant to Civil Code sections 2223 and 2224, a constructive trust may only be imposed when property or some interest in property exists, the plaintiff has a right to the property and the defendant wrongfully acquires or detains that property. *Burlesci v. Peterson* (1998) 68 Cal.App.4th 1062, 1067. Resulting trusts arise to enforce the inferred intent of the parties. *Dabney v. Phillea* (1951) 38 Cal.2d 60, 68. To establish a resulting trust, the plaintiff must allege "that defendants at no time had an intent to hold the properties for [plaintiff's] benefit but, rather, have claimed adversely to [her]." *Id.* Constructive and resulting trusts, however, are not independent causes of action. They are merely equitable remedies. *Stansfield v. Starkey* (1990) 220 Cal.App.3d 59. Thus, the demurrer is sustained as to these causes of action and Plaintiff is granted leave to amend the Complaint.

Case No. CV09-00220 – Pierson vs. Stetler

Tentative Ruling: **Approved. No appearance required.**

Case No. CV07-27377 – Yandell vs. Griffith

Tentative Ruling: Plaintiff's petition for appointment of guardian ad litem will be set for an informal hearing. The court will exclude all other parties to the action from the courtroom during the hearing, pursuant to *In re Sara D.* (2001) 87 Cal.App.4th 661, 672.

Family Law – 10:30a.m.

Case No. FL0-00166 – Cash vs. Cobb

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. FL04-24790 – Mar. of Greco

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the petitioner.

Case No. FL10-00108– Mar. of Harrington

Tentative Ruling: **Appearance required.** The court will order the parties to orientation and mediation.

Case No. FL97-18194 – Hedin vs. Lott

Tentative Ruling: **No appearance required.** This matter is taken off calendar, as the juvenile court has jurisdiction over the minor at this time.

Case No. FL08-27974 – Mar. of Kohler

Tentative Ruling: **Appearance required.** This matter is on calendar for a review hearing. If the parties are satisfied with the current schedule, or have agreed to modify the schedule, this matter may go off calendar, and neither party need appear. If either party requests the court modify the schedule, this matter will be set for a contested hearing.

Case No. FL03-24051 – Krumpelman vs. Billings

Tentative Ruling: **Appearance required.** The court will discuss the summer visitation schedule.

Case No. FL10-00107 – McIntosh vs. Berry

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the petitioner.

Case No. FL10-00066 – Ramoz vs. Boswell

Tentative Ruling: **Appearance required.** The court is not in receipt of the custody evaluation.

Case No. FL08-28329 – Youngblood vs. Rine

Tentative Ruling: **No appearance required.** The court is in receipt of the custody investigation review report, and adopts the recommendations on page 4. Petitioner is to prepare the Order on physical and legal custody and recommendations 1 and 2, and may petition the court for a change of venue.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC07-27275 – Abbott Laboratories vs. Indian Valley Health Care District

Tentative Ruling: **No appearance required.** The court has received defendant's status conference statement and continues this matter to June 13, 2011, at 1:30p.m., for status conference on defendant's bankruptcy proceedings.

Case No. LC09-00267 – American Express Bank vs. Griffith

Tentative Ruling: **No appearance required.** The court notes this is a collections case. Plaintiff has not filed a proof of service nor obtained an order for publication, pursuant to Rule 3.740(d). At the request of plaintiff, this matter is continued for a further CMC on July 12, 2010, at 2:00p.m. If plaintiff has not filed a proof of service or obtained an order for publication, the court will issue an order to show cause why reasonable monetary sanctions should not be imposed.

Case No. FL09-00187 – Mar. of Bartos

Tentative Ruling: **Appearance required.** If the court receives a settlement document, this matter may be taken off calendar.

Case No. FL09-00264 – Mar. of Bishop

Tentative Ruling: **Appearance required.** If the court receives a settlement document, this matter may be taken off calendar.

Case No. LC09-0260 – Discover Bank vs. McClure

Tentative Ruling: **Appearance required.** If there is no appearance by plaintiff, the court will issue terminating sanctions and dismiss the complaint.

Case No. LC09-00337 – Ford Motor Credit vs. Grizzly Creek Development

Tentative Ruling: **No appearance required.** This matter is continued for further case management conference on July 26, 2010, at 2:00p.m.

Case No. CV09-00328 – Kaufman vs. Wilburn

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV09-00332 - PG&E vs. Pezzullo

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV09-00065 – Adams vs. Dept. of Fish & Game

Tentative Ruling: **Appearance required.** The court will specially set the matter for hearing on plaintiff's motion for class certification.

Case No. LC09-00312 – Citibank vs. Decoe

Tentative Ruling: **Appearance required.** OSC hearing on plaintiff's counsel's failure to appear on May 24, 2010.

Case No. LC09-00098 – Citibank vs. Rodriguez

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV09-00103 – Griffin vs. KG Walters Construction

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a new trial date.

Case No. CV09-00194 – Martin vs. Lakeside Villas

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV09-00243 – Owens vs. Kerns

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. FL09-00129 – Mar. of Thayer

Tentative Ruling: **Appearance required.** The court will set this matter for a mandatory settlement conference.

Case No. FL08-28542 – Mar. of Uchida

Tentative Ruling: **Appearance required.** If the court receives settlement documents, this matter may be taken off calendar. Otherwise, the court will confirm the date set for trial.